

**To:** Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]  
**Cc:** Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]  
**From:** Downing, Donna  
**Sent:** Fri 7/7/2017 4:43:04 PM  
**Subject:** WOTUS-2 materials responding to Ann's request  
[Attachment 2 Options for Scalia test v1.docx](#)  
[Attachment 4 WOTUS2 Effects on Other Programs.docx](#)  
[Table for Options 3-8-2017 v4.docx](#)  
[Table WOTUS2 Step 2 options v2.docx](#)  
[wotus 2 Legal Considerations draft 3-17.docx](#)  
[WOTUS2 proposed plan 3-22-17 draft.docx](#)  
[Scope of Clean Water Act Program Impacts Beyond Section 404 v1.docx](#)  
[December 2008 Rapanos Guidance.pdf](#)

Hi Mindy:

## Deliberative Process / Ex. 5

## Deliberative Process / Ex. 5

Please let me know if you would like additional materials in response to Ann's request. Thanks!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

**To:** Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]  
**Cc:** Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]  
**From:** Downing, Donna  
**Sent:** Fri 7/7/2017 3:52:14 PM  
**Subject:** RE: WOTUS  
Scope of Clean Water Act Program Impacts Beyond Section 404 v1.docx

Hi Mindy:

As requested, I'll pull together what's on Sharepoint and/or in emails from Steve (who is not a Sharepoint fan). I also have an electronic copy of the 2008 guidance. I'll put all I find that's responsive in an email to you before 1pm.

In the meantime, attached for your consideration is a 2-pager giving illustrations of Deliberative Process / Ex. 5  
Deliberative Process / Ex. 5 This is intended to respond to Lee's request for a succinct illustration of how

## Deliberative Process / Ex. 5

If you have time, you might check out the draft scenarios on Sharepoint. I think the attached 2-pager might be more useful for Lee at next week's meeting, but perhaps the additional details in the draft scenarios also could be useful. Here's a link to the scenario document:

## Nonresponsive Internal URL/ Ex. 6

I'm cc'ing Rose and Damaris in case they have suggested edits or other thoughts on the attached 2-pager.

Donna

**From:** Eisenberg, Mindy  
**Sent:** Friday, July 07, 2017 11:04 AM

**To:** Downing, Donna <Downing.Donna@epa.gov>  
**Subject:** Fwd: WOTUS

Hey Donna,

Please see Ann's email to clarify what I mentioned yesterday.

Thanks!

Sent from my iPhone

Begin forwarded message:

**From:** "Campbell, Ann" <Campbell.Ann@epa.gov>  
**Date:** July 7, 2017 at 11:01:07 AM EDT  
**To:** "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>  
**Cc:** "Connors, Sandra" <Connors.Sandra@epa.gov>  
**Subject:** WOTUS

Mindy, as I mentioned yesterday per my discussion with Lee and Mike, can I get copies of the early scoping papers that were prepared **Deliberative Process / Ex. 5** Though not fully fleshed out, I recall they laid out **Deliberative Process / Ex. 5** (maybe the Administrator's briefing paper too?). I recall that the program also prepared a briefing paper on **Deliberative Process / Ex. 5** Lee would appreciate receiving a copy of that as well. Lastly, if you could send the 2008 guidance, that would be great.

Sorry for the lengthy information collection request...just trying to facilitate Lee getting up to speed with information his counterparts already have.

Thanks much!

Ann





KIM REYNOLDS  
GOVERNOR

## OFFICE OF THE GOVERNOR

ADAM GREGG  
LT GOVERNOR

June 19, 2017

The Honorable Scott Pruitt  
U.S. Environmental Protection Agency

RE: EPA Request for Federalism Comments on Waters of the United States

Dear Administrator Pruitt,

The Iowa Department of Agriculture and Land Stewardship and the Iowa Department of Natural Resources offer the following feedback on the U.S. Environmental Protection Agency's (EPA) request for comments regarding "Waters of the United States." We appreciate the opportunity to comment on this matter, and support the Environmental Protection Agency's intentions to follow an expeditious process to rescind and revise the definition of the Waters of the United States.

The state of Iowa prides itself on being a national leader in improving water quality. In 2013, the Iowa Nutrient Reduction Strategy was put into place to assess and reduce nutrients delivered to Iowa waterways and the Gulf of Mexico using a science and technology-based approach. The strategy outlines voluntary efforts to reduce nutrients in surface water from both point sources, such as wastewater treatment plants and industrial facilities, and nonpoint sources, including farm fields and urban areas, in a scientific, reasonable and cost effective manner. This statewide strategy, which follows the recommended framework provided by the Environmental Protection Agency, has served as a model for several states and has led to measurable progress in Iowa water quality. Early results include farmers and 200 local organizations working together in 56 demonstration projects in targeted watersheds to help implement and demonstrate water quality practices. This includes 16 targeted ag demonstration projects, 7 projects focused on expanding the use and innovated delivery of water quality practices, and 34 urban water quality demonstration projects. These partners will provide more than \$26.5 million to go with more than \$17.2 million in state funding going to these projects. The total nitrogen load reduction from 3 select conservation practices was more than 3.8 million pounds. These early results are great examples of Iowa's historic collaborative efforts to maintain the health and vitality of our rivers, lakes, and streams. Unfortunately we have experienced delays in implementation of environmentally beneficial projects and other burdens resulting from the current definition and implementation of the Waters of the United States Rule. We provide the following input on how this rule could be more effective and less restrictive for Iowa, and allow us to reach the ambitious goals laid out in the Iowa Nutrient Reduction Strategy and clean water overall.

**Question 1 - How would you like to see the concepts of "relatively permanent" and "continuous surface connection" defined and implemented? How would you like to see the agencies interpret "consistent with" Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?**

Given the inconsistency and various interpretations of the scope of the Clean Water Act's authority over bodies of water such as wetlands and seasonal streams, we believe there needs to

be specific, concise language used regarding the concepts of “navigable water,” “relatively permanent” and “continuous surface connection.” The often repeated goal of EPA and USACE efforts to revise the definition of Waters of the U.S. (WOTUS) is to provide clarity. The rules must take into consideration the language of the Clean Water Act and all applicable U.S. Supreme Court Rulings. The 2015 rulemaking sacrificed clarity in its attempt to implement the significant nexus test. This welcome switch to Justice Scalia’s approach must focus solely on the goal of a clear and concise definition that is implementable by the States and understandable to the regulated public. Jurisdiction must be limited to those physical land features that contain water at all times except during extraordinary circumstances such as drought. To that end, “relatively permanent” should be limited to perennial rivers and streams and permanent lakes and wetlands that are adjacent, and connected directly to, perennial rivers and streams. The perennial nature of the rivers and streams would satisfy both criteria of being relatively permanent and having a continuous surface water connection. The connection between a lake or wetland and the adjacent river should also be continuous except during extraordinary circumstances such as drought.

There is precedent in Iowa for the determination by EPA that only perennial rivers and streams are jurisdictional. Pursuant to the EPA’s regulations, states must assume that all jurisdictional waters are capable of attaining all aquatic life, recreational, and other uses unless a scientific analysis has been completed and determined that certain uses could not be attained. For purposes of implementing this rebuttable presumption in Iowa, the EPA in 2006 approved Iowa administrative rule 567 IAC 62.3(1)(b) in which Iowa has applied the presumption to “All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa are designated as Class A1 waters.” A similar approach undertaken nationally would provide much needed clarity, and would be consistent with Justice Scalia’s plurality opinion in *Rapanos v. United States*.

In developing the new rules consistent with President Trump’s Executive Order, “*Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule*,” it is important to note that all exemptions from the 2015 Clean Water Rule should be re-instated. For example, the previously-exempt Conservation Reserve Enhancement Program (CREP) wetlands serve to improve water quality through the removal of nutrients and other contaminants. We request that the Environmental Protection Agency consult with States to determine what additional exemptions should be included in any revised rule.

**Question 2 - What opportunities and challenges exist for your state or locality with taking a Scalia approach?**

The state of Iowa would benefit from taking a “Scalia approach” to the Waters of the United States proposed rule and from considering the statutory language of the Clean Water Act and other U.S. Supreme Court precedent. We are confident this would result in a positive opportunity to reduce administrative overhead, cost and amount of administrative work, and would provide significant benefit to taxpayers. Previously, we have experienced delays related to jurisdictional determinations and establishment of the conditions of permits associated with the development of environmentally beneficial projects. There are potential opportunities for greater efficiencies in the implementation of future road construction and other critical infrastructure projects. We feel that the “Scalia approach” offers a more efficient, and expeditious approach to associated implementation of the new WOTUS rule.

**Question 3 - Do you anticipate any changes to the scope of your state or local programs regarding CWA jurisdiction? If so, what sort of actions do you anticipate would be needed?**


The overriding concern of a diverse group of impacted stakeholders, including state leaders, is that any new rule may impose significant barriers to the advancement of innovative, state- and local-driven conservation and environmental practices that would actually advance our common goal of water quality. The Trump Administration's intentions that "waters are kept free from pollution while at the same time promoting economic growth and minimizing regulatory uncertainty" are achieved with the goals that we have previously discussed. We further stress the importance of engaging stakeholders that will be impacted by the new WOTUS rule at all levels and especially at the local level. There must be engagement in developing this rule from the ground up, and not just at the federal agency level. This ensures that end users, such as our landowners and others that enjoy the use of Iowa's rivers, lakes, and streams, can better understand the impact that this new rule can and will have on their livelihoods.

**Question 4 - Are there any other programs specific to our region, state, or locality that could be affected but would not be captured in such an economic analysis?**

There are likely programs specific to the state of Iowa that could be affected but would not be captured in the federal Clean Water Act economic analysis. Until we see proposed language for any new definition or rule, we cannot adequately determine what programs will be impacted and to what extent. A more narrow definition of WOTUS that aligns with the statute could be beneficial to Iowa programs to provide more certainty or predictability regarding what is jurisdictional within a project, therefore streamlining the administrative portion of a project which will result in cost savings.

We strongly urge the EPA and US Army Corps of Engineers to listen to the consensus concerns of the States, including Iowa, to revise and put into place a better, less restrictive and more effective, Waters of the United States rule. Together, we look forward to continuing our commitment to improve water quality and our water resources.

Sincerely,



Kim Reynolds  
Governor of Iowa



Adam Gregg  
Lt. Governor of Iowa

Cc: Bill Northey, Secretary, Iowa Department of Agriculture and Land Stewardship  
Chuck Gipp, Director, Iowa Department of Natural Resources

**To:** Goodin, John[Goodin.John@epa.gov]  
**Cc:** Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]  
**From:** Kwok, Rose  
**Sent:** Sat 7/15/2017 12:11:22 AM  
**Subject:** RE: Recurring WOTUS Regional/HQ Staff workgroup meeting  
[Table WOTUS2 Step 2 options v2 - read only.docx](#)  
[Template for Regional Tracking of Meetings.xlsx](#)  
[Tribal Consultation Comment Summary.docx](#)  
[Memo - Status of Federalism 7.10.17.docx](#)  
[Memo - Talking Point for Mindy.docx](#)  
[Programmatic Scenarios draft 06-19-2017.docx](#)

[Scenario:](#)  
[Scenario:](#)  
[Scenario:](#)  
[Scenario:](#)  
[Scope of](#)

## Deliberative Process / Ex. 5

John,

I've printed out these documents and left them under the door of your bay. I printed off a clean copy of the Scenarios document, but per my email earlier, it is still a work in progress unfortunately.

**From:** Kwok, Rose  
**Sent:** Friday, July 14, 2017 6:23 PM  
**To:** Goodin, John <Goodin.John@epa.gov>  
**Cc:** Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Subject:** RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Okay, I have some bad news.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I'll print you off (and email) what we have as the latest, but it might change. Sorry.

**From:** Kwok, Rose  
**Sent:** Thursday, July 13, 2017 6:48 PM  
**To:** Goodin, John <Goodin.John@epa.gov>  
**Cc:** Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Subject:** RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Yes, will do

**From:** Goodin, John  
**Sent:** Thursday, July 13, 2017 6:46 PM  
**To:** Kwok, Rose <[Kwok.Rose@epa.gov](mailto:Kwok.Rose@epa.gov)>  
**Cc:** Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>  
**Subject:** RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Oops—thanks for clarifying! Just the summaries, options, and template. Would you also mind printing out the scenarios as they are COB Friday?

Copying Mindy because we discussed the latter and don't want to duplicate.

Thanks!

John

**From:** Kwok, Rose  
**Sent:** Thursday, July 13, 2017 6:30 PM  
**To:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>  
**Subject:** RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi John,

Do you want all of the federalism (160) and tribal letters (31)? Or just the summaries that we have drafted so far? The only other two that I can print are: the May 31 options paper and the template for tracking Regional meetings on WOTUS. The other one a folder for them to put documents in. Let me know if you want all of the letters or just a summary

**From:** Goodin, John  
**Sent:** Thursday, July 13, 2017 6:27 PM  
**To:** Kwok, Rose <[Kwok.Rose@epa.gov](mailto:Kwok.Rose@epa.gov)>  
**Subject:** FW: Recurring WOTUS Regional/HQ Staff workgroup meeting

Rose-- Would you print each of the five so ready first thing Monday for me? I don't think my front office staff can access. Let me know if better to add one/them to SharePoint access for these.

Thanks

John

**From:** Kwok, Rose

**Sent:** Thursday, July 13, 2017 6:25 PM

**To:** Downing, Donna <[Downing.Donna@epa.gov](mailto:Downing.Donna@epa.gov)>; Jensen, Stacey M CIV USARMY HQDA (US) <[Stacey.M.Jensen@usace.army.mil](mailto:Stacey.M.Jensen@usace.army.mil)>; Sachs, Erica <[Sachs.Erica@epa.gov](mailto:Sachs.Erica@epa.gov)>; Williams, Ann <[Williams.Ann@epa.gov](mailto:Williams.Ann@epa.gov)>; Montella, Daniel <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>; Lapp, Jeffrey <[lapp.jeffrey@epa.gov](mailto:lapp.jeffrey@epa.gov)>; Shamet, Stefania <[Shamet.Stefania@epa.gov](mailto:Shamet.Stefania@epa.gov)>; Somerville, Eric <[Somerville.Eric@epa.gov](mailto:Somerville.Eric@epa.gov)>; Able, Tony <[Able.Tony@epa.gov](mailto:Able.Tony@epa.gov)>; Melgin, Wendy <[melgin.wendy@epa.gov](mailto:melgin.wendy@epa.gov)>; Schaller, Andrea <[schaller.andrea@epa.gov](mailto:schaller.andrea@epa.gov)>; Fontenot, Alison <[Fontenot.Alison@epa.gov](mailto:Fontenot.Alison@epa.gov)>; Schafer, Jeannette <[schafer.jeannette@epa.gov](mailto:schafer.jeannette@epa.gov)>; McCarthy, Julia <[McCarthy.Julia@epa.gov](mailto:McCarthy.Julia@epa.gov)>; Livingston, Peggy <[Livingston.Peggy@epa.gov](mailto:Livingston.Peggy@epa.gov)>; Leidy, Robert <[Leidy.Robert@epa.gov](mailto:Leidy.Robert@epa.gov)>; Dean, Heather <[Dean.Heather@epa.gov](mailto:Dean.Heather@epa.gov)>; Szalay, Endre <[Szalay.Endre@epa.gov](mailto:Szalay.Endre@epa.gov)>; Cherry, Andrew <[Cherry.Andrew@epa.gov](mailto:Cherry.Andrew@epa.gov)>; Stokely, Peter <[Stokely.Peter@epa.gov](mailto:Stokely.Peter@epa.gov)>; Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>; Flannery-Keith, Erin <[Flannery-Keith.Erin@epa.gov](mailto:Flannery-Keith.Erin@epa.gov)>; Christensen, Damaris <[Christensen.Damaris@epa.gov](mailto:Christensen.Damaris@epa.gov)>; Keating, Jim <[Keating.Jim@epa.gov](mailto:Keating.Jim@epa.gov)>; Bennett, Brittany <[bennett.brittany@epa.gov](mailto:bennett.brittany@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; McDavit, Michael W. <[Mcdavit.Michael@epa.gov](mailto:Mcdavit.Michael@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Ludwig-Monty, Sarah <[ludwig-monty.sarah@epa.gov](mailto:ludwig-monty.sarah@epa.gov)>; Balasa, Kate <[balasa.kate@epa.gov](mailto:balasa.kate@epa.gov)>; Palomaki, Ashley <[Palomaki.Ashley@epa.gov](mailto:Palomaki.Ashley@epa.gov)>; Cantilli, Robert <[Cantilli.Robert@epa.gov](mailto:Cantilli.Robert@epa.gov)>; Wesson, Dolores <[Wesson.Dolores@epa.gov](mailto:Wesson.Dolores@epa.gov)>; Martinez, Maria <[Martinez.Maria@epa.gov](mailto:Martinez.Maria@epa.gov)>; Cindy Barger <[cindy.s.barger.civ@mail.mil](mailto:cindy.s.barger.civ@mail.mil)>; Morgan, James <[Morgan.James@epa.gov](mailto:Morgan.James@epa.gov)>; Moffatt, Brett <[Moffatt.Brett@epa.gov](mailto:Moffatt.Brett@epa.gov)>; Feinmark, Phyllis <[Feinmark.Phyllis@epa.gov](mailto:Feinmark.Phyllis@epa.gov)>; Kovac, Steve <[Kovac.Steve@epa.gov](mailto:Kovac.Steve@epa.gov)>

**Cc:** Speir, Jeffrey <[speir.jeffrey@epa.gov](mailto:speir.jeffrey@epa.gov)>; Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>; Peterson, Carol <[Peterson.Carol@epa.gov](mailto:Peterson.Carol@epa.gov)>; Horchem, Brad <[horchem.brad@epa.gov](mailto:horchem.brad@epa.gov)>; Gude, Karen <[Gude.Karen@epa.gov](mailto:Gude.Karen@epa.gov)>; Alexander, Laurie <[Alexander.Laurie@epa.gov](mailto:Alexander.Laurie@epa.gov)>; Swackhammer, J-Troy <[Swackhammer.J-Troy@epa.gov](mailto:Swackhammer.J-Troy@epa.gov)>

**Subject:** RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi Folks,

As a follow-up to today's call, the following have been placed on the Sharepoint. These documents (with the exemption of the meetings spreadsheet) are **all not for distribution, so please don't share them**. We will eventually be posting the federalism and tribal consultation letters on our website, but they should not be shared until that happens

1) Federalism letters:

**Nonresponsive Internal URL/ Ex. 6**

2) Tribal letters:

**Nonresponsive Internal URL/ Ex. 6**

3) May 31 options paper:

**Nonresponsive Internal URL/ Ex. 6**

4) Template for tracking Regional meetings on WOTUS:

**Nonresponsive Internal URL/ Ex. 6**

5) Folder for saving documents shared during meetings (including presentations, agenda, etc., handouts, etc. (shared by EPA or shared with EPA by the stakeholder group).:

**Nonresponsive Internal URL/ Ex. 6**

Please be sure to track your meetings either directly in the spreadsheet or via the hard copy I sent out the other week (and email it to me).

Let us know if you have any questions.

Rose

**To:** Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]  
**From:** Goodin, John  
**Sent:** Thur 7/13/2017 6:24:02 PM  
**Subject:** Fwd: Docket ID No. EPA-HQ-OW-2017-0203 - Request for Extension of Comment Period of Definition of "Waters of the United States" - Recodification of Pre-existing Rules  
2017-7-13 Request for comment period extension repeal rule.PDF  
ATT00001.htm

FYI

Sent from my iPhone

Begin forwarded message:

**From:** "Navis Bermudez" <nbermudez@selcdc.org>  
**To:** "CWAwotus" <CWAwotus@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>  
**Cc:** "Blan Holman" <bholman@selcsc.org>, "Geoff Gisler" <ggisler@selcnc.org>  
**Subject:** Docket ID No. EPA-HQ-OW-2017-0203 - Request for Extension of Comment Period of Definition of "Waters of the United States" - Recodification of Pre-existing Rules

Please find attached SELCs request for an extension of the comment period of *Definition of "Waters of the United States"* – *Recodification of Pre-existing Rules*, Docket ID No. EPA-HQ-OW-2017-0203. If you have any questions, feel free to e-mail or call me.

Best regards,

Navis A. Bermudez

Federal Legislative Director

Southern Environmental Law Center

(202) 499-2075



**To:** Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]  
**From:** Schaefer-Gomez, Julia  
**Sent:** Thur 7/13/2017 5:50:28 PM  
**Subject:** RE: letters - Arkansas

[AR-AAD 2017-06-19.pdf](#)  
[AR-Benton County 2017-06-23.pdf](#)  
[AR-Boone County 2017-06-13.pdf](#)  
[AR-Carroll County 2017-06-18.pdf](#)  
[AR-Craighead County 2017-06-13.pdf](#)  
[AR-Faulkner County 2017-06-19.pdf](#)  
[AR-Governor Hutchinson 2017-06-16.pdf](#)  
[AR-Greene County 2017-06-19.pdf](#)  
[AR-Hot Spring County 2017-06-19.pdf](#)  
[AR-Logan County District 2&3 2017-06-19.pdf](#)  
[AR-Logan County District 5 2017-06-19.pdf](#)  
[AR-Marion County 2017-06-19.pdf](#)  
[AR-Mississippi County 2017-06-27.pdf](#)  
[AR-Newton County 2017-06-05.pdf](#)  
[AR-Poinsett County 2017-06-21.pdf](#)  
[AR-Polk County 2017-06-19.pdf](#)  
[AR-Pope County Judge 2017-07-06.pdf](#)  
[AR-Pulaski County 2017-06-21.pdf](#)  
[AR-Saline County 2017-06-19.pdf](#)  
[AR-Searcy-County 2017-06-19.pdf](#)  
[AR-Sebastian County District 10 2017-06-19.pdf](#)  
[AR-Sebastian County 2017-06-20.pdf](#)  
[AR-Stone County 2017-06-08.pdf](#)

23 letters from Arkansas

Julia

-----Original Message-----

From: Eisenberg, Mindy  
Sent: Thursday, July 13, 2017 12:49 PM  
To: Schaefer-Gomez, Julia <Schaefer-Gomez.Julia@epa.gov>  
Subject: letters

Hi Julia,

Can you pull the federalism letters from the below states and email them to me?

Thanks!

Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities Division Office of Wetlands, Oceans and Watersheds  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460  
(202) 566-1290  
eisenberg.mindy@epa.gov

-----Original Message-----

From: Greenwalt, Sarah  
Sent: Thursday, July 13, 2017 9:18 AM  
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
Subject:

Mindy,

Would you please send me all of the letters we received from Utah, Minnesota, and and Arkansas?

Sent from my iPhone

**To:** Schaefer-Gomez, Julia[Schaefer-Gomez.Julia@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]  
**Cc:** Wesson, Dolores[Wesson.Dolores@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]  
**From:** Hanson, Andrew  
**Sent:** Wed 7/12/2017 8:58:29 PM  
**Subject:** RE: stats on tribal and federalism letters

Ahhh.....the disconnect. For OR and UT, **neither** Gov. Kate Brown nor Gov. Gary Herbert signed these letters.....they're merely named on the states' letterhead, so they should not count as gov's.

I'll forward the Kim Reynolds letter.....please forward the individual Mike DeWine (OH AG letter) when you have a moment.

**From:** Schaefer-Gomez, Julia  
**Sent:** Wednesday, July 12, 2017 4:49 PM  
**To:** Hanson, Andrew <Hanson.Andrew@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Cc:** Wesson, Dolores <Wesson.Dolores@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>  
**Subject:** RE: stats on tribal and federalism letters

Hi Drew,

**For the Governors:**

Damaris, Dolores and I just looked at your list of governor's letters and we see that you are missing two letters that are in the SharePoint (attached here). The letters you haven't counted are Utah (Gov. Herbert) and Oregon (Gov. Brown).

The SharePoint is missing one letter from Governor Reynolds (Iowa) – please send if you have that letter.

The total number of individual governors letters is 18 (and if we add the 3 governor's signatures for the NGA & WGA, *that would make it 21 total signatures from governors*). However, we prefer to file these additional signatures under the "intergovernmental associations" category.

**For the Attorney Generals:**

There are 2 individual letters received from AGs:

- 1 letter with 20 signatures total
- 1 letter from Mike DeWine (Ohio) who ALSO signed the prior letter, *which is why we have always counted 20 AG signatures total*

Also – we will recount all the letters by the end of this week to give you a final number.

Thanks

Julia & Dolores

**From:** Hanson, Andrew

**Sent:** Wednesday, July 12, 2017 4:05 PM

**To:** Cory, Preston (Katherine) <[Cory.Preston@epa.gov](mailto:Cory.Preston@epa.gov)>; Bennett, Tate <[Bennett.Tate@epa.gov](mailto:Bennett.Tate@epa.gov)>; Greenwalt, Sarah <[greenwalt.sarah@epa.gov](mailto:greenwalt.sarah@epa.gov)>

**Cc:** Schaefer-Gomez, Julia <[Schaefer-Gomez.Julia@epa.gov](mailto:Schaefer-Gomez.Julia@epa.gov)>; Wesson, Dolores <[Wesson.Dolores@epa.gov](mailto:Wesson.Dolores@epa.gov)>

**Subject:** RE: stats on tribal and federalism letters

Without putting too fine a point on it, I counted CA (Brown), MT (Bullock) and SD (Daugaard) only for their signatures for NGA and WGA, respectively. None of the three penned his own letter on WOTUS. Only Mead (WY) wrote on behalf of the state **and** also signed for NGA,

hence, yielding 19 gov's signatures.

**From:** Hanson, Andrew  
**Sent:** Wednesday, July 12, 2017 3:48 PM  
**To:** Cory, Preston (Katherine) <[Cory.Preston@epa.gov](mailto:Cory.Preston@epa.gov)>; Bennett, Tate <[Bennett.Tate@epa.gov](mailto:Bennett.Tate@epa.gov)>; Greenwalt, Sarah <[greenwalt.sarah@epa.gov](mailto:greenwalt.sarah@epa.gov)>  
**Cc:** Schaefer-Gomez, Julia <[Schaefer-Gomez.Julia@epa.gov](mailto:Schaefer-Gomez.Julia@epa.gov)>; Wesson, Dolores <[Wesson.Dolores@epa.gov](mailto:Wesson.Dolores@epa.gov)>  
**Subject:** RE: stats on tribal and federalism letters

## **WOTUS Commenters as of July 11, 2017**

**At a glance:     19 Governors (16 individual letters)**

**NGA letter signed by 2 co-signatories Mead and Brown, with Mead also sending his own letter from WY**

**WGA letter signed by 2 co-signatories, Bullock and Daugaard**

**2 Lieutenant Governors**

**20 Attorneys General** (all signed one letter)

**18 Intergovernmental Associations**

**61 cabinet-level state agencies**

**From:** Cory, Preston (Katherine)

**Sent:** Wednesday, July 12, 2017 3:25 PM

**To:** Bennett, Tate <[Bennett.Tate@epa.gov](mailto:Bennett.Tate@epa.gov)>; Greenwalt, Sarah <[greenwalt.sarah@epa.gov](mailto:greenwalt.sarah@epa.gov)>

**Cc:** Hanson, Andrew <[Hanson.Andrew@epa.gov](mailto:Hanson.Andrew@epa.gov)>

**Subject:** RE: stats on tribal and federalism letters

I have 20 listed total (please advise if any are missing as this is from master list). Sarah, let me know which you are missing and I will print and deliver to you.

ALASKA

ARIZONA

ARKANSAS

CALIFORNIA

HAWAII

IDAHO

IOWA

KANSAS

MAINE

MISSISSIPPI

MISSOURI

MONTANA

NEBRASKA

NEVADA

NEW HAMPSHIRE

NORTH DAKOTA

SOUTH CAROLINA

SOUTH DAKOTA

VIRGINIA

WYOMING

**From:** Bennett, Tate  
**Sent:** Wednesday, July 12, 2017 2:42 PM  
**To:** Greenwalt, Sarah <[greenwalt.sarah@epa.gov](mailto:greenwalt.sarah@epa.gov)>  
**Cc:** Cory, Preston (Katherine) <[Cory.Preston@epa.gov](mailto:Cory.Preston@epa.gov)>; Hanson, Andrew <[Hanson.Andrew@epa.gov](mailto:Hanson.Andrew@epa.gov)>  
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**From:** "Bowman, Liz" <[Bowman.Liz@epa.gov](mailto:Bowman.Liz@epa.gov)>  
**Date:** July 12, 2017 at 2:08:59 PM EDT  
**To:** "Greenwalt, Sarah" <[greenwalt.sarah@epa.gov](mailto:greenwalt.sarah@epa.gov)>, "Ford, Hayley" <[ford.hayley@epa.gov](mailto:ford.hayley@epa.gov)>, "Lyons, Troy" <[lyons.troy@epa.gov](mailto:lyons.troy@epa.gov)>, "Bennett, Tate" <[Bennett.Tate@epa.gov](mailto:Bennett.Tate@epa.gov)>, "Dravis, Samantha" <[dravis.samantha@epa.gov](mailto:dravis.samantha@epa.gov)>  
**Cc:** "Jackson, Ryan" <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>  
**Subject:** RE: stats on tribal and federalism letters

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**From:** Greenwalt, Sarah  
**Sent:** Wednesday, July 12, 2017 2:08 PM  
**To:** Ford, Hayley <[ford.hayley@epa.gov](mailto:ford.hayley@epa.gov)>; Bowman, Liz <[Bowman.Liz@epa.gov](mailto:Bowman.Liz@epa.gov)>; Lyons, Troy <[lyons.troy@epa.gov](mailto:lyons.troy@epa.gov)>; Bennett, Tate <[Bennett.Tate@epa.gov](mailto:Bennett.Tate@epa.gov)>; Dravis, Samantha <[dravis.samantha@epa.gov](mailto:dravis.samantha@epa.gov)>  
**Cc:** Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>  
**Subject:** Fwd: stats on tribal and federalism letters

For our metrics/press purposes.

Sent from my iPhone

Begin forwarded message:

**From:** "Eisenberg, Mindy" <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>  
**Date:** July 12, 2017 at 12:25:54 PM EDT  
**To:** "Greenwalt, Sarah" <[greenwalt.sarah@epa.gov](mailto:greenwalt.sarah@epa.gov)>  
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- Most of the tribes oppose rescinding or revising the Clean Water Rule and oppose a Scalia-only approach to jurisdiction
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Federalism

In total **24 meetings** were held from April 19 to June 29, and **156 letters** were received as part of the federalism process. The breakdown of who we heard from is as follows:

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- 20 attorney generals (19 signed onto 1 letter)
- 62 state agencies
- 63 local-government representatives
- 18 intergovernmental associations
- 8 state associations
- 11 water & irrigation districts



Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

[eisenberg.mindy@epa.gov](mailto:eisenberg.mindy@epa.gov)

**To:** Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]  
**Cc:** Wesson, Dolores[Wesson.Dolores@epa.gov]  
**From:** Christensen, Damaris  
**Sent:** Wed 7/12/2017 7:04:07 PM  
**Subject:** FW: REMINDER! TOMORROW, LGAC Executive Committee Teleconference, Thursday, July 13th, 3:00-4:00 EST- **Nonresponsive Conference Code/ Ex. 6** agenda and meeting materials  
EC-Agenda-July13-2  
LGAC-WOTUS DRAFT Report 1.3.1-June97.pdf  
LGAC Final TransmittalLetter-WOTUS-July13-17.pdf

## Deliberative Process / Ex. 5

## Deliberative Process / Ex. 5

## Deliberative Process / Ex. 5

Damaris

**From:** Eargle, Frances  
**Sent:** Wednesday, July 12, 2017 2:04 PM  
**To:** mayor <mayor@greensburgks.org>; Jill Duson < **Personal Email / Ex. 6** >; Robert Cope  
< **Personal Email / Ex. 6** >; DuPree, Mayor Johnny L. <jdupree@hattiesburgms.com>; Susan  
Hann < **Personal Email / Ex. 6** >; Elizabeth B. Kautz  
<Elizabeth.Kautz@burnsvillemn.gov>; Hector F. Gonzalez <hgonzalez@ci.laredo.tx.us>; Karen  
Freeman-Wilson <kfreemanwilson@ci.gary.in.us>  
**Cc:** Erika Martinez <emartinez8@ci.laredo.tx.us>; Macheal Collins  
<Macheal.Collins@burnsvillemn.gov>; Joi Whiteside <jwhiteside@ci.gary.in.us>; Lyons, Troy  
<lyons.troy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Bennett, Tate  
<Bennett.Tate@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Cory, Preston  
(Katherine) <Cory.Preston@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Matthews,  
Demond <matthews.demond@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg,  
Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>  
**Subject:** REMINDER! TOMORROW, LGAC Executive Committee Teleconference, Thursday,  
July 13th, 3:00-4:00 EST-Call in: **Nonresponsive Conference Code/ Ex. 6** agenda and meeting  
materials

**Reminder! TOMORROW, LGAC Executive Committee Teleconference, Thursday, July 13<sup>th</sup>, 3:00-4:00 EST**

Good Afternoon,

The LGAC Executive Committee will meet **TOMORROW, Thursday, July 13<sup>th</sup>, 3:00-4:00 EST**. The call in number is **Nonresponsive Conference Code/ Ex. 6** the EC will

**Deliberative Process / Ex. 5**

**Deliberative Process / Ex. 5**

Thanks!

Fran Eargle

202-564-3115

Attachments:

- EC July 13<sup>th</sup> Agenda
- LGAC Final Waters of the U.S. Report
- LGAC Transmittal Letter (Final)



Message

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**From:** Hanson, Andrew [Hanson.Andrew@epa.gov]  
**Sent:** 7/12/2017 6:51:14 PM  
**To:** Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]  
**CC:** Christensen, Damaris [Christensen.Damaris@epa.gov]  
**Subject:** RE: stats on tribal and federalism letters  
**Attachments:** WOTUSFedCommentsByState.docx

If there's undue confusion (opposed to normal/baseline confusion) **20 AGs** (attorneys general) signed onto one letter. **16 governors** wrote in individually. 2 governors signed the NGA letter (one of whom was Matt Mead (WY) who also wrote his own letter) and 2 governors signed the WGA letter.

Tate has all this info, as do Dolores and Julia.

---

**From:** Bennett, Tate  
**Sent:** Wednesday, July 12, 2017 2:42 PM  
**To:** Greenwalt, Sarah <greenwalt.sarah@epa.gov>  
**Cc:** Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>  
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**Cc:** "Jackson, Ryan" <jackson.ryan@epa.gov>  
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**To:** Ford, Hayley <ford.hayley@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>  
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Washington, DC 20460

(202) 566-1290

[eisenberg.mindy@epa.gov](mailto:eisenberg.mindy@epa.gov)



**Hon. Bob Dixon, Chairman**  
Greensburg, Kansas  
**Hon. Jill Duson, Vice – Chairwoman**  
Portland, Maine  
**Ms. Susan Anderson**  
Portland, Oregon  
**Hon. Norm Archibald**  
Abilene, Texas  
**Hon. Kitty Barnes**  
Catawba County, North Carolina  
**Mr. Rodney Bartlett (SCAS)**  
Peterborough, New Jersey  
**Hon. Andy Beerman**  
Park City, Utah  
**Hon. David Bobzien**  
Reno, Nevada  
**Mr. Scott Bouchie**  
Mesa, Arizona  
**Hon. Stephanie Chang**  
State of Michigan  
**Hon. Robert Cope**  
Salmon, Idaho  
**Hon. Hardie Davis**  
Augusta, Georgia  
**Hon. Kim Driscoll**  
Salem, Massachusetts  
**Hon. Johnny DuPre**  
Hattiesburg, Mississippi  
**Hon. Karen Freeman-Wilson**  
Gary, Indiana  
**Dr. Hector Gonzalez, M.D.**  
Laredo, Texas  
**Ms. Teri Goodmann**  
Dubuque, Iowa  
**Hon. Manna Jo Greene**  
Ulster County, New York  
**Ms. Susan Hann**  
Brevard County, Florida  
**Hon. Elizabeth Kautz**  
Burnsville, Minnesota  
**Hon. Cynthia Koehler**  
Marin County, California  
**Hon. Merceria Ludgood**  
Mobile County, Alabama  
**Hon. Sal Panto**  
Easton, Pennsylvania  
**Hon. Brad Pierce**  
Aurora, Colorado  
**Hon. Victoria Reinhardt**  
Ramsey County, Minnesota  
**Hon. Mary Casillas Salas**  
Chula Vista, California  
**Mr. Kevin Shafer**  
Milwaukee, Wisconsin  
**Hon. Tom Sloan**  
State of Kansas  
**Hon. Mark Stodola**  
Little Rock, Arkansas  
**Hon. Ryan Sundberg**  
Humboldt County, California  
**Samara Swanston, Esq.**  
New York, New York  
**Hon. Stephen T. Williams**  
Huntington, West Virginia  
**Hon. Miro Weinberger**  
Burlington, Vermont  
**Mr. Jeff Witte**  
State of New Mexico  
**Hon. Shawn Yanity**  
Stillaguamish Tribe, Washington  
**Hon. Dawn Zimmer**  
Hoboken, New Jersey

**Frances Eargle, DFO**

July 14, 2017

Honorable E. Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Dear Administrator Pruitt:

We are writing on behalf of your Local Government Advisory Committee (LGAC), which is composed of 35 elected and appointed officials of state, local and tribal government. We very much appreciate the opportunity to provide input on clarifying the regulatory status of “Waters of the United States” (WOTUS). We also commend your leadership in recognizing and resolving the regulatory confusion and complexity of WOTUS by issuing a new rule.

The LGAC has been engaged in ‘Waters of the United States’ since May 2014. Through a series of outreach meetings and conference calls, the LGAC has heard over 60 hours of comments and recommendations from our colleagues across the United States. The *LGAC Waters of United States 2017 Report* is a compilation of recommendations from a diverse group of local leaders who have experienced the current regulatory framework.

One of the most important themes we have heard (and experienced) is the lack of clarity and predictability in the current permitting process. The EPA’s **enhanced** partnership with the U.S. Army Corps of Engineers is a tremendous step towards resolving these issues that impede economic growth and hamper public infrastructure projects.

Although permitting is a complex issue, some practical solutions such as establishing a less than 90 -day time frame for jurisdictional determinations can significantly ease the regulatory uncertainty. In addition, state-specific or region-specific criteria can be developed to provide much needed flexibility within a national standard. The LGAC also supports exemptions such as ditches, stormwater management systems, green infrastructure, normal farming practices and converted crop lands.

Additional exemptions may be appropriate at the regional level, such as in the West with ephemeral streams.

The approach the LGAC puts forward also invites an enhanced state and local role in implementing the Clean Water Act Section 404 and WOTUS. Local governments are very interested in being part of the solution, but will need dedicated resources to fully assist through assumption of the Section 404 program and for greater utilization of state and regional general permits.

As local government officials, the availability and accessibility of clean and safe water is one of our highest priorities. Source water protection is a key element and certain water bodies may need case-specific jurisdictional reviews. The LGAC recommends that EPA work with state and local government to identify these significant waterbodies and provide maps of these areas. Improving transparency and predictability will ease the regulatory uncertainty that currently exists. The LGAC acknowledges that there were many comments we received during our work on the Charge. The LGAC encourages the EPA to consider all of the various comments the agency receives in the rule-making process.

In summary, the LGAC appreciates your leadership and collaboration with local, tribal and state partners. We offer our continued assistance to you, Administrator Pruitt, and to the team at EPA as you move forward. The opportunity exists to develop a clear and predictable regulatory framework that will protect source water and provide clean, safe and affordable water for the American people while promoting sustainable economic development. Thank you for the opportunity to comment and for your consideration of our recommendations.

Sincerely,

Mayor Bob Dixon  
Chairman

Ms. Susan Hann, P.E.  
Chairwoman, Protecting America's  
Waters Workgroup

Commissioner Dr. Robert Cope, DVM  
Chairman, Small Community Advisory  
Subcommittee (SCAS)

Mayor Elizabeth Kautz  
Vice-Chair, Protecting America's  
Waters Workgroup

Dr. Hector Gonzalez, M.D.  
Chairman, Environmental Justice (EJ)  
Workgroup





# EPA'S LOCAL GOVERNMENT ADVISORY COMMITTEE



7/13/2017

## Waters of the United States 2017 Report

Local  
Government  
Advisory  
Committee



**From the LGAC's Charter, defining general goals:**

The LGAC is a policy-oriented committee. To assist the agency in ensuring that its regulations, policies, guidance and technical assistance improve the capacity of local governments to carry out these programs, the LGAC provides advice and recommendations to the EPA Administrator.



*"Water is the lifeblood of all our communities and our economic prosperity. And we also want to be good stewards of our Nation's water resource for now and the years to come. This is why having a clear and enforceable 'Waters of the U.S.' rule is so important to us. It also is important that it is financially sustainable and does not overreach, but affirms our goals to make our communities a better place to live and work for all of our citizens."*

**Mayor Bob Dixon,  
LGAC Chairman**



*"Clean, safe and affordable drinking water is a cornerstone of health, recreation and commerce. EPA has a critical role to create a facilitative, cooperative and collaborative regulatory environment in which local, tribal, state and the federal partners work together to protect one of our nation's most important resources."*

**Susan Hann,  
LGAC Water Workgroup Chairwoman**

# EPA's Local Government Advisory Committee

## WATERS OF THE UNITED STATES 2017 REPORT

### Executive Summary

#### I. Introduction and Background

- A. EPA's Proposed Waters of the U.S. Rule
- B. Committee Charge
- C. Historical Context

#### II. Waters of the U.S. and Local Governments

- A. Waters: Our Nation's Wealth and Health
- B. Local Governments and Cooperative Federalism
- C. Clarity and Predictability
- D. Flexibility and Regionalization
- E. Enhanced State and Local Government Role
- F. Scalia Approach: Challenges and Opportunities
- G. Exemptions
- H. Permitting Reform
- I. Agriculture and Rural Communities
- J. Outreach to Local Governments
- K. Financial Sustainability

#### III. Response to Charge: Findings and Recommendations

#### IV. Conclusion

#### V. Appendix



Sawtooth Mountains, South of Stanley, ID

- Photo Source: Eric Vance,

EPA

## EXECUTIVE SUMMARY

The EPA Administrator issued a compelling charge to the Local Government Advisory Committee that provided an opportunity for local, tribal and state governments to advise the EPA regarding 'Waters of the United States.' The *LGAC Waters of the United States Report 2017* provides both policy perspective and specific responses to the charge that can help guide the EPA in moving forward with rulemaking.

Clean, safe and affordable drinking water is vital to the health and prosperity of our communities. As local, state and tribal representatives, the LGAC is committed to this mission in philosophy and action. The report includes several thematic concepts:

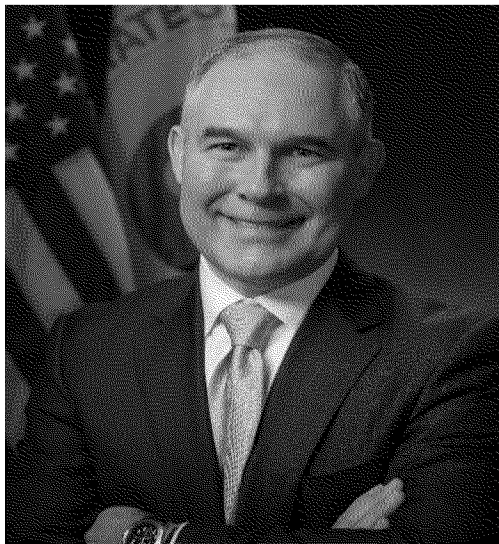
- Local, tribal and state governments are partners in the mission to provide and preserve clean, safe and affordable drinking water. We connect with citizens and know our unique communities. Armed with this knowledge, we can act locally in the interest of clean water.
- Clarity and predictability are paramount to success. The lack of clarity and predictability are serious challenges to effectuating any rulemaking process. Clear definitions and criteria are needed for jurisdictional determinations rather than interpretations. Simplifying the jurisdictional determination process is one of the most important steps.
- Flexibility and consideration of regional differences are needed. Several examples of potential regional exemptions are included in the report.
- There are opportunities to enhance state and local roles. Local and state governments want to be engaged and can do so with the appropriate resources through State Assumption of the 404 program or State Programmatic General Permits.
- Regulatory reform should include incentives for best practices including green infrastructure, stormwater management systems, agricultural innovation and other evolving innovations. Exemptions for activities that clearly have a net positive impact need to be considered.
- The permitting process must be more predictable. Jurisdictional determinations of "yes", "no", or "maybe" within a definitive time frame such as 60-90 days would be a tremendous improvement. Technology, including mapping, and other innovations, can improve efficiency and effectiveness. Utilizing the 2008 guidance (with definitional changes) can be a good foundation for jurisdictional determinations.
- Source water protection remains a primary concern as this is the foundation of the nation's drinking water system and health of our communities. Ultimately, a community's ratepayers absorb the cost of treating source water, which can become unmanageable as source water quality deteriorates.
- Affordability is a universal theme heard across the nation. Whether it is the cost of source water treatment, compliance costs and penalties, infrastructure development or a myriad of other costs – the ability of citizens to pay must be considered in the equation. If a community cannot develop an affordable rate structure, then citizens do not truly have access to clean, safe drinking water.

In summary, the *LGAC Waters of the United States 2017* report delivers a series of recommendations that can assist EPA in evolving the regulatory framework in a way that collaborates with local governments, improves efficiency and effectiveness and advances the goal of clean, safe and affordable drinking water for our communities.

## I. Introduction and Background

### A. EPA'S PROPOSED WATERS OF THE U.S. RULE

On February 28, 2017, the President signed the Executive Order on *Restoring the Rule of Law, Federalism, and Economic Growth* by Reviewing the 'Waters of the United States' Rule (issued June 2015).<sup>1</sup> The Executive Order gives direction to the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule (CWR) and "publish for notice and comment a proposed rule rescinding or revising the rule." The E.O. also directs that EPA and the Army "shall consider



The Honorable Scott Pruitt, EPA Administrator

interpreting the term 'navigable waters' in a manner "consistent with Justice Scalia's opinion in *Rapanos*"<sup>2</sup> which includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

As part of EPA's efforts to consult with state and local government officials, EPA's Local Government Advisory Committee (LGAC) is providing its recommendations to the Administrator on revising the definition of 'Waters of the United States' (WOTUS) and identifying ways to reduce the regulatory burden on local communities as well as balance that with environmental protection.

On April 10, 2017, EPA Administrator Scott Pruitt sent out a solicitation for input on the forthcoming proposal to rescind and

seek input from officials as an important step for the EPA in the process prior to proposing regulations that may have implications on federalism.

The LGAC's charge is also an opportunity to hear from state, local and tribal partners from across the country on approaches to consider for a WOTUS rule and other significant issues to be considered in developing and implementing a revised WOTUS rule.

*"We greatly look forward to the opportunity to sit at the table with our state and local partners from across the country to discuss the rule and develop an approach to address this significant issue while keeping States at the forefront of our mission."*

-----  
The Honorable Scott Pruitt, Administrator, EPA

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<sup>1</sup> <https://www.whitehouse.gov/the-pres-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

<sup>2</sup> *Rapanos v. United States*, 547 U.S. 715 (2006) 126 Supreme Court 2208; 165 LEd. 2d 159



The agencies intend to follow an expeditious, two -step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two -month period prior to the 6<sup>th</sup> Circuit stay of that rule, has been the law in place since 1986, and thus maintains the status quo, and 2) promulgation of a revised definition of 'Waters of the U.S.' consistent with direction in the February 28, 2017, E.O.



State Representative Tom Sloan, Kansas

***"Our goal is to help the EPA be a better partner with State administrators and policy-makers to better achieve our shared objectives: protecting the waters of the U.S. and protecting the economic interests of Americans."***

State Representative Tom Sloan, Kansas

## B. COMMITTEE CHARGE

As part of EPA's efforts to consult with state and local government officials, EPA's Local Government Advisory Committee (LGAC) puts forth our findings and recommendations to the Administrator on revising the definition of 'Waters of the United States' (WOTUS) and identifying ways to reduce the regulatory burden on local communities as well as balance that with environmental protection.

***"EPA Administrator Pruitt gave the LGAC a great opportunity to provide broad input not only on proposed rules, but also on their effective implementation."***

***"Waters of the US' rule is particularly challenging, but the LGAC embraced the charge, by providing our unique perspective to better help clarify, define and protect our important water resources across America."***

Jeff Witte,  
Secretary, New Mexico Department of  
Agriculture



Jeff Witte, Secretary, New Mexico Department of  
Agriculture

The LGAC consists of 35 local, state and tribal government elected and appointed officials representing cities, parishes, counties, municipalities, and other local political jurisdictions. Local officials are knowledgeable and provide unique perspectives on issues relating to a revised rule. Further, the LGAC offers balanced views from diverse on-the-ground perspectives.

Through a collaborative process, the LGAC was charged to provide Administrator Pruitt with expeditious and meaningful advice relating to a revised 'Waters of the U.S.' rule. Overall, the goal is to provide recommendations on approaches the EPA should consider when formulating a revised rule.

*"The City of Aurora Colorado appreciates the EPA's efforts to reach out to local communities to gather comments for potential approaches to the WOTUS rule." Council Member Brad Pierce*

---



Council Member Brad Pierce, Aurora, CO

This Report highlights our findings and recommendations from our unique local government perspective which will assist the agency to help shape a revised rule that will better promote cooperative federalism. It also provides our perspectives on the best means to communicate a revised rule with state, local and tribal governments.

## C. HISTORICAL PERSPECTIVE

Congress enacted the Clean Water Act (CWA) in 1972 [33 U.S.C. §§1251 to 1387] to prevent the pollution of 'Waters of the United States', including waters not deemed traditionally "navigable" such as streams, lakes, and wetlands. Since then, the CWA has been instrumental in protecting public health and the environment. However, Supreme Court decisions in 2001 and 2006 interpreted the Clean Water Act in ways that changed the approach for determining whether a water body was protected under the Act.

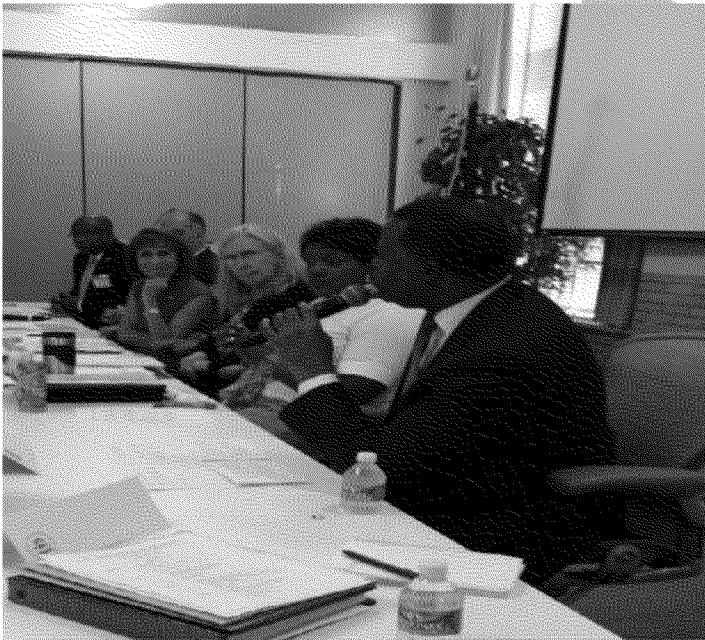
The Supreme Court's decisions shifted focus away from potential effects on interstate commerce, and towards connectivity among waters and potential effects of a water on the integrity of downstream navigable waters. The intent of the 2015 rule was to clarify what waters were covered under the Clean Water Act. Following Supreme Court decisions in 2001 and 2006, determining protection for streams and wetlands became more complex. Requests for a rule to provide clarity came from Congressional members, state and local officials, industry, agriculture, environmental groups and the public.



In May 2014, the LGAC undertook an extensive analysis and collaboration to provide recommendations to the EPA on a proposed rule to clarify 'Waters of the U.S.' in the 1972 Clean Water Act. It was published in the Federal Register on April 21, 2014 [79 Fed. Reg. 22,188] with a public comment period that was extended twice. In response to the May 2014 Charge, the LGAC held four face-to-face public meetings from across the country to engage local officials regarding the proposed rule. The goal of these public meetings was to hear input and develop recommendations for the EPA to consider in promulgating a final rule. To engage a wide range of officials, the meetings were held in diverse geographical regions: St. Paul, Minnesota; Atlanta, Georgia; Tacoma, Washington; and Worcester, Massachusetts.

*"We would like to recognize the efforts of those on the LGAC. Your work on the 'Waters of the U.S.' is thoughtful and insightful. On behalf of the NACo, we thank you for your dedication, time and ongoing commitment to these efforts!"*

**Julie Ufner, National Association of Counties (NACo)**



LGAC 2014 Meeting, Atlanta, GA,

with Mayor Kasim Reed

The LGAC heard diverse viewpoints from individuals of local, state and tribal representatives. These perspectives were deliberated and incorporated in a Report for the EPA to consider entitled, *"Initial Findings and Recommendations Pertaining to EPA's Clean Water Act Waters of the U.S. Proposed Rule."*<sup>3</sup>

The LGAC heard many concerns expressed across the country regarding clarity, sufficient time to give input; regulatory delays and the costs (financial and resources) of implementation. Despite some changes to the final rule as a result of the public comments and some LGAC recommendations incorporated, the 2015 final rule still lacked clarity and was contested by states, industry and other organizations. Some LGAC members felt that EPA's detailed response to comments would demonstrate to participants that their concerns were heard and acknowledged. Other LGAC members felt that the public, and especially those involved in the LGAC public outreach, should have the opportunity to comment on a substantially revised rule. The LGAC concluded that it was (and remains) important to EPA's credibility to be responsive to the concerns of local governments expressed through the public outreach process.

<sup>3</sup> [https://www.epa.gov/sites/production/files/2015-10/documents/11.5.14\\_w.o.t.u.s.\\_report.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/11.5.14_w.o.t.u.s._report.pdf)

## II. Water and Our Communities

### A. Water: Our Nation's Health and Wealth



Water resources are the lifeblood for our nation's cities, towns and small rural communities. It is essential for the health, prosperity and security for our citizens, and is among the top priorities for us in local governments. As State, local and tribal government partners we desire to manage our water resources so that we have reliable and safe water supplies to create jobs, attract industry and investments, and provide for the health and welfare of our citizens. A common understanding of the value of water and how it impacts the health and prosperity of us at

Evening barge trip on the Mississippi River near downtown Saint Paul, MN.  
Photo Source: Davin Brandt, Ramsey County, MN

the local level is important for governmental decision-making. For example, water infrastructure costs are estimated to be \$100 per household per year. For smaller communities, these same costs are \$400 to \$800 more per year.<sup>4</sup> It is estimated that for every \$1 million investment in water infrastructure it supports between 15 and 18 jobs throughout the economy. Therefore, disruption in our nation's water supply could be devastating to communities. Therefore, protections under the Clean Water Act for the 117 million people (one third of Americans) that rely on these waters as part of our public drinking water assets are decisions of public trust and stewardship.

*Our communities depend on water for economic progress.*

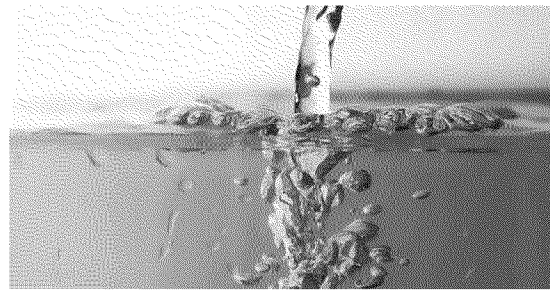
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<sup>4</sup> <http://www.nerwa.org/gwnews/db212.pdf>, The Value of Water and the Water Operator, by Doug Buresh, Circuit Rider #3

Protecting our rivers, lakes, streams and wetlands and keeping them healthy and safe is the responsibility of all levels of government. At the same time costs of treatment should not be transferred directly to rate payer - **at the tap.**



Mayor Norm Archibald, Abilene, TX



*"One of the most important resources for any community is its water supply. The ability to provide for the future is the ability to provide water for the future.*

*As our city plans ahead, the building of the Cedar Ridge Reservoir is at the heart of our plans. It is imperative we work hand-in-hand with our federal and state agencies to streamline the permitting processes. The next generation is counting on us."*

*Mayor Norm Archibald, Abilene, TX*

## B. Local Governments and Cooperative Federalism

The Clean Water Act (CWA) as amended in 1972, established the basic structure for protecting our nation's water resources by regulating pollutant discharges into the 'Waters of the United States.' Clean Water Act programs are largely federal, state and tribal programs.

The Clean Water Act applies to "navigable waters," defined in the statute as 'Waters of the United States.' On February 28, 2017, the President of the United States issued an Executive Order directing EPA and Department of the Army to review and rescind and/or revise the 2015 Rule.

The EPA and the U.S. Army Corps of Engineers are in the process of considering a revised definition of 'Waters of the United States' consistent with the Executive Order. Local governments support a straight-forward rulemaking process, inclusive of the tenets of cooperative federalism. This approach acknowledges the shared responsibility of state and local governments in the governance and in the cooperation to work out details of responsibility.

"The U.S. Conference of Mayors sincerely appreciates the work of the Local Government Advisory Council (LGAC) for working on the issue of 'Waters of United States' and for providing multiple forums to listen to the concerns of the many parties that have concerns. This rule will have an enormous impact on the nation and it is important that the views of local government are well represented."

Judy Sheahan, Assistant Executive Director  
The U.S. Conference of Mayors

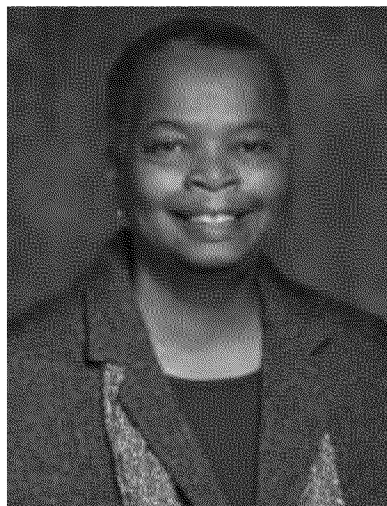


Homestake Reservoir – Pitkin and Eagle Counties,  
Colorado Photo Source: City of Aurora, CO

The CWA Section 404 is jointly administered by EPA and the Corps of Engineers and regulates discharges of dredged or fill materials into 'Waters of the United States', including wetlands. CWA Section 404 is largely federal with the exception of a small number of State Assumed 404 Programs (Michigan and New Jersey). If empowered, states and tribes could play an increased and more efficient role in managing the program. Local governments too, have a strong role to play and can be key strategic partners in protecting our nation's water resources. Local governments too manage broad water quality protection efforts such as managing stormwater, flood protection and enhanced watershed protection along with protecting the sources of drinking water.

Local governments have the tools to strengthen wetland and stream protection efforts that better support community goals with greater protection for the resource. Integrated Planning (IP) offers municipalities the opportunity to meet multiple Clean Water Act requirements by sequencing separate wastewater and stormwater programs while maximizing investments so that the highest priority projects come first. EPA, states, and municipalities have achieved progress in implementing IP approaches while addressing the most serious water quality issues in order of priority to protect public health and the environment.

*In Portland, Maine, we're lucky to have water resources at our door step. Water is vital to our regional economy and way of life. Therefore, our city and regional stakeholders collaborate with state and national partners to ensure we keep our rivers, streams, and bays clean. Everyone plays an important role!*  
*Councilor Jill Duson, Portland, ME*



Councilor Jill Duson, Portland, ME and Vice -Chair of LGAC



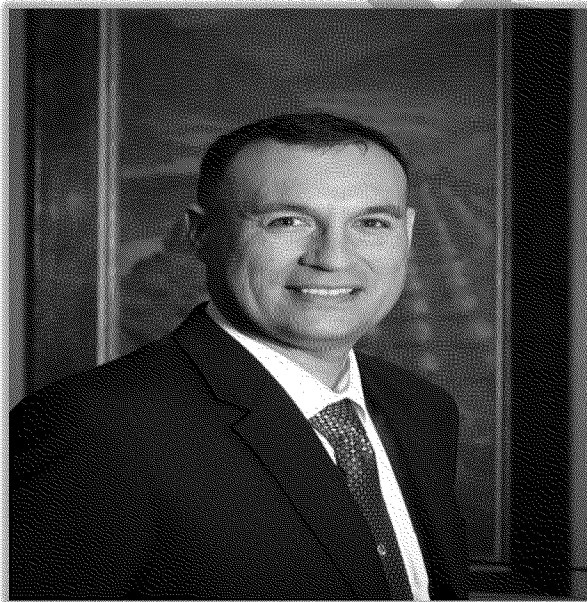
***"We should be gravely concerned about the minimization of the federal role in the Clean Water Act. Any changes at the federal level must be accompanied by the commitment and action to enhance protection by state and local officials. This requires frank discussion given the financial challenges faced by some local communities and states."*** Mayor Karen Freeman-Wilson, Gary, IN



Mayor Karen Freeman-Wilson, Gary, IN

### C. Clarity and Predictability

A central theme heard by the LGAC in public meetings of state, local and tribal government officials on the 2015 'Waters of the U.S.' rule is that definitions were too broad or confusing and were subject to interpretation through litigation.



Supervisor Ryan Sundberg, Humboldt County, CA

***"It is very important that we have a clear definition when it comes to WOTUS. Without clear definitions, the costs of doing business rise, and we jeopardize our ability to provide jobs and remain competitive. The LGAC has collected great input from around the Country and I am hopeful to see some positive changes."***

Supervisor Ryan Sundberg, Humboldt County, CA